

IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11
	:	
DPH HOLDINGS CORP., <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
Reorganized Debtors.	:	(Jointly Administered)
	:	
-----	X	

AFFIDAVIT OF SERVICE

I, Darlene Calderon, being duly sworn according to law, depose and say that I am employed by Kurtzman Carson Consultants LLC, the Court appointed claims and noticing agent for the Reorganized Debtors in the above-captioned cases.

On September 21, 2010, I caused to be served the documents listed below (i) upon the parties listed on Exhibit A hereto via electronic notification, and (ii) upon the party listed on Exhibit B hereto via postage pre-paid U.S. mail:

- 1) Reorganized Debtors' Second Supplemental Reply with Respect to Proof of Administrative Expense Claim Number 17330 (Randy D. Austin) ("Second Supplemental Reply - Randy D. Austin") (Docket No. 20610) [a copy of which is attached hereto as Exhibit C]
- 2) Reorganized Debtors' Statement of Disputed Issues with Respect to Proof of Administrative Expense Claim Number 19089 (Etkin Management, L.L.C.) ("Statement of Disputed Issues - Etkin Management, L.L.C.") (Docket No. 20611) [a copy of which is attached hereto as Exhibit D]
- 3) Notice of Deadline to File Motion for Leave to File Late Administrative Expense Claim with Respect to Late Administrative Expense Claim Filed by Cadence Innovation, LLC (Administrative Expense Claim No. 20055) (Docket No. 20613) [a copy of which is attached hereto as Exhibit E]
- 4) Reorganized Debtors' Response to ITW's Reply to the Reorganized Debtors' Response to the Supplemental Brief of Illinois Tool Works, Inc. and ITW Food Equipment Group LLC in Support of Claim Nos. 11983, 11985, 11988, and 11989 (Docket No. 20614) [a copy of which is attached hereto as Exhibit F]

On September 21, 2010, I caused to be served the document listed below upon the party listed on Exhibit G hereto via overnight mail:

- 5) Reorganized Debtors' Second Supplemental Reply with Respect to Proof of Administrative Expense Claim Number 17330 (Randy D. Austin) ("Second Supplemental Reply - Randy D. Austin") (Docket No. 20610) [a copy of which is attached hereto as Exhibit C]

On September 21, 2010, I caused to be served the document listed below upon the parties listed on Exhibit H hereto via overnight mail:

- 6) Reorganized Debtors' Statement of Disputed Issues with Respect to Proof of Administrative Expense Claim Number 19089 (Etkin Management, L.L.C.) ("Statement of Disputed Issues - Etkin Management, L.L.C.") (Docket No. 20611) [a copy of which is attached hereto as Exhibit D]

On September 21, 2010, I caused to be served the document listed below upon the parties listed on Exhibit I hereto via overnight mail:

- 7) Notice of Deadline to File Motion for Leave to File Late Administrative Expense Claim with Respect to Late Administrative Expense Claim Filed by Cadence Innovation, LLC (Administrative Expense Claim No. 20055) (Docket No. 20613) [a copy of which is attached hereto as Exhibit E]

On September 21, 2010, I caused to be served the document listed below upon the parties listed on Exhibit J hereto via overnight mail:

- 8) Reorganized Debtors' Response to ITW's Reply to the Reorganized Debtors' Response to the Supplemental Brief of Illinois Tool Works, Inc. and ITW Food Equipment Group LLC in Support of Claim Nos. 11983, 11985, 11988, and 11989 (Docket No. 20614) [a copy of which is attached hereto as Exhibit F]

Dated: September 24, 2010

/s/ Darlene Calderon

Darlene Calderon

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 24<sup>th</sup> day of September, 2010, by  
Darlene Calderon, proved to me on the basis of satisfactory evidence to be the person who  
appeared before me.

Signature: /s/ Michelle Cruz

Commission Expires: 1/2/14

# **EXHIBIT A**

## Post-Emergence Master Service List

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<http://www.dphholdingsdocket.com>

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re	:	Chapter 11
	:	
DPH HOLDINGS CORP., <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
	:	(Jointly Administered)
Reorganized Debtors.	:	
	:	
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REORGANIZED DEBTORS' SECOND SUPPLEMENTAL REPLY WITH RESPECT TO  
PROOF OF ADMINISTRATIVE EXPENSE CLAIM NUMBER 17330 (RANDY D. AUSTIN)

("SECOND SUPPLEMENTAL REPLY – RANDY D. AUSTIN")

DPH Holdings Corp. and its affiliated reorganized debtors in the above-captioned cases (collectively, the "Reorganized Debtors"), hereby submit the Reorganized Debtors' Second Supplemental Reply With Respect To Proof Of Administrative Expense Claim Number 17330 (Randy D. Austin) and respectfully represent as follows:

1. On August 17, 2010, the Reorganized Debtors served on Randy D. Austin the (i) Reorganized Debtors' First Set Of Requests For Admission With Respect To Proof Of Administrative Expense Claim Number 17330, which is attached hereto as Exhibit A, (ii) Reorganized Debtors' First Set Of Interrogatories With Respect To Proof Of Administrative Expense Claim Number 17330, which is attached hereto as Exhibit B, and (iii) Reorganized Debtors' First Request For Production Of Documents With Respect To Proof Of Administrative Expense Claim Number 17330, which is attached hereto as Exhibit C (collectively, the "Discovery Requests"). Mr. Austin's responses to the Discovery Requests were due no later than September 10, 2010. (See Ex. A at 1; Ex. B at 1; Ex. C at 1.)

2. On September 10, 2010, the Reorganized Debtors received the undocketed Response Of Randy D. Austin to Objection To Claim No. 17330 (the "Response"), which is attached hereto as Exhibit D. Mr. Austin subsequently communicated to the Reorganized Debtors' counsel that the Response constitutes his response to the Discovery Requests.

3. As a threshold matter, it is apparent that the Response is not a passable substitute for the answers to interrogatories, requests for admissions, and production of documents requested by the Reorganized Debtors in the Discovery Requests. Issues of form aside (Mr. Austin is representing himself in this matter), the Response provides little of the information sought by the Reorganized Debtors.



4. Moreover, as explained in the Reorganized Debtors' Supplemental Reply With Respect To Proof Of Administrative Expense Claim Number 17330 (Randy D. Austin) (Docket No. 20553), dated August 26, 2010 (the "Supplemental Reply"), Mr. Austin bears the burden of proving his claim. Although Mr. Austin has made several vague and conclusory statements, he has not come forward with any evidence in support of his claim, even though the Reorganized Debtors specifically asked that he provide supporting information in numerous informal requests and in the Discovery Requests.

5. In the Discovery Requests, for example, the Reorganized Debtors asked Mr. Austin to "[i]dentify the date or dates on which [he] contacted LHH concerning outplacement services." (Ex. B ¶ 3.) Mr. Austin alleges in his Response that LHH "verbally reported Delphi's denial of Outplacement Services for Mr. Austin the first week of July, 2009," and that "[t]he initial contact to LHH was made the prior week." (Ex. D at 1.) He fails to disclose, however, whether the alleged initial contact occurred on or before June 29, 2010, Mr. Austin's deadline for requesting outplacement services. In any event, the evidence demonstrates that Mr. Austin did not contact LHH until July 17, 2009, nearly three weeks after the deadline. (See Supplemental Reply ¶ 17.)

6. Furthermore, Mr. Austin has never offered any rational explanation for his damages calculation of \$5,000, let alone any evidence that he has suffered compensable losses in that amount. In an email sent to the Reorganized Debtors, dated September 16, 2010, attached hereto as Exhibit E, Mr. Austin claims to have incurred a total expense of \$3,402.10 for "unreimbursed interview expenses, search meeting expenses, training expenses including Youngstown State University tuition, ASQ Jobs Board, postage, paper, phone, Job search textbooks." However, Mr. Austin has not provided an itemized breakdown or any

documentation that he actually paid or incurred these expenses. Moreover, certain of these items such as the reimbursement of college tuition do not constitute outplacement services that Mr. Austin asserts were wrongfully denied. In addition, as set forth in the Declaration of Dean Unrue, no employee that has contacted LHH or Delphi human resources to obtain outplacement services more than 60 days after separation has ever received such outplacement services. (See Supplemental Reply Ex. A. ¶ 6). Finally, no former employee has ever received a monetary award in lieu of outplacement services that were to be provided by LHH, even if contact was timely made within 60 days of separation. Id.

7. For these reasons and the reasons set forth more fully in the Supplemental Reply, the Reorganized Debtors are not liable to Mr. Austin for any amounts asserted in his claim.

WHEREFORE the Reorganized Debtors respectfully request that this Court enter an order (a) disallowing and expunging Mr. Austin's claim in its entirety and (b) granting the Reorganized Debtors such other and further relief as is just.

Dated: New York, New York  
September 21, 2010

SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP

By: /s/ John Wm. Butler, Jr.  
John Wm. Butler, Jr.  
John K. Lyons  
Ron E. Meisler  
155 North Wacker Drive  
Chicago, Illinois 60606

- and -

Four Times Square  
New York, New York 10036

Attorneys for DPH Holdings Corp., et al.,  
Reorganized Debtors

# **Exhibit A**

Hearing Date: September 24, 2010  
Hearing Time: 10:00 a.m. (Prevailing Eastern Time)

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
155 North Wacker Drive  
Chicago, Illinois 60606  
John Wm. Butler, Jr.  
John K. Lyons  
Ron E. Meisler

- and -

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
Four Times Square  
New York, New York 10036

Attorneys for DPH Holdings Corp., et al.,  
Reorganized Debtors

DPH Holdings Corp. Legal Information Hotline:  
Toll Free: (800) 718-5305  
International: (248) 813-2698

DPH Holdings Corp. Legal Information Website:  
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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re	:	Chapter 11
	:	
DPH HOLDINGS CORP., <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
	:	(Jointly Administered)
Reorganized Debtors.	:	
	:	
-----	x	

REORGANIZED DEBTORS' FIRST SET OF REQUESTS FOR ADMISSION WITH  
RESPECT TO PROOF OF ADMINISTRATIVE EXPENSE CLAIM NUMBER 17330

("DEBTORS' FIRST SET OF REQUESTS FOR ADMISSION – RANDY D. AUSTIN –  
PROOF OF ADMINISTRATIVE EXPENSE CLAIM NUMBER 17330")

DPH Holdings Corp. and certain of its affiliated reorganized debtors in the above-captioned cases (the "Reorganized Debtors"), successors of Delphi Corporation and certain of its domestic subsidiaries and affiliates, former debtors and debtors-in-possession in the above-captioned cases (the "Debtors"), by and through their attorneys, request that Randy D. Austin make the admissions set forth below. All responses are due no later than September 10, 2010 to the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 155 North Wacker Dr., Chicago, Illinois 60606, Attn: John K. Lyons and Louis S. Chiappetta. The Reorganized Debtors hereby reserve their right to amend, modify, or supplement this request for Admissions With Respect To Proof Of Administrative Expense Claim Number 17330.

Instructions and Definitions

A. The requirements of Rules 7033-1 and 7034-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of New York (the "Local Rules") are incorporated herein.

B. The Uniform Definitions in Discovery Requests set forth in Civil Rule 26.3 of the Local Rules of the United States District Courts for the Southern District of New York, incorporated by reference in Rule 7026-1 of the Local Rules shall apply.

C. "Bankruptcy Code" means the United States Code, 11 U.S.C. §§ 101-1330, as amended as of October 8, 2005.

D. "Debtors" means Delphi Corporation, its affiliated debtors and debtors-in-possession and/or any of its predecessor(s) or successor(s) in interest, parent corporations, subsidiaries, affiliates and other related entities, owners, officers, directors, employees, agents and beneficiaries, including attorneys, consultants and independent contractors, or any one of the foregoing.

E. "Delphi" means Delphi Corporation.

F. "Reorganized Debtors" means DPH Holdings Corp. and its affiliated reorganized debtors in the above-captioned cases.

Requests for Admission

1. Admit that you were separated from Delphi on or about May 1, 2009.

2. Admit that you attended a meeting concerning your separation from Delphi with the Delphi human resources representatives concerning your separation on or about March 2, 2009.

3. Admit that during the meeting referenced in the previous paragraph you received the documents attached hereto as Exhibit A.

4. Admit that you became employed by another company on or about November 22, 2009.

5. Admit that you became employed by General Electric Corporation on or about December 14, 2009.

6. Admit that you are currently employed.

Dated: Chicago, Illinois  
August 17, 2010

SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP

By: /s/ John K. Lyons  
John Wm. Butler, Jr.  
John K. Lyons  
Ron E. Meisler  
155 N. Wacker Drive  
Chicago, Illinois 60606

- and -

Four Times Square  
New York, New York 10036

Attorneys for DPH Holdings Corp. et al.,  
Reorganized Debtors



# **Exhibit A**



## **Delphi Separation Allowance Plan Employee Policy, Benefit and Outplacement Services Information**

This material presents general information only and is based on policy and benefit plan provisions in effect as of this date. It is not intended to nor does it provide all details about each program and policy. Complete descriptions of each are contained in official plan documents that are the governing plans over other oral or written statements. Furthermore, Delphi Corporation reserves the right to amend, change, or terminate any program, benefit, or policy at any time. Only the Board of Directors, or its delegate, has this authority. The information contained herein and any specific item described does not imply any guarantee.

## **POLICY PROVISIONS**

### **Eligibility**

Separation Allowance Plan benefits are payable to U.S. employees compensated as regular or flexible service salaried employees, who are separated from employment as the result of an Eligible Termination which includes without limitation:

- Mutually Satisfactory Release;
- Certain Special Separations which may include:
  - The closing of an office or business location;
  - A reduction in force;
  - Downsizing;
  - Restructuring, reorganization or re-engineering of a business group, unit or department;
  - Job elimination; or
  - Other circumstances Delphi determines which may or may not be characterized as a Limited Program of Terminations

Separation Allowance Plan benefits are not payable in the event of employment termination as a result of:

- Retirement;
- Quit (which includes an employee's failure to accept a suitable offer of employment);
- Discharge (for personal misconduct);
- Voluntary termination of employment unless the termination results from participation in a special incentive separation program which treats the separation as an Eligible Termination.
- Transfers between the Corporation and any of its wholly owned or substantially wholly owned domestic and foreign subsidiaries or other entity owned by Delphi;
- Separation arising out of outsourcing, the sale of a corporate unit, merger or other combination, spin-off, reorganization, liquidation, dissolution, or other winding up involving Delphi where the employee continues or is offered the opportunity to continue employment;
- A court decree;
- Death;
- Release due to unsatisfactory performance while in the Orientation and Development period;
- Final Release.

### **Severance Pay**

Eligible Employees who do not sign a Release of Claims will be eligible to receive one (1) month's base pay if length of service is five (5) or more years. Employees with less than five (5) years of service will be paid only through the end of the month in which the Employee last works and receive no severance pay without signed Release of Claims.

Eligible Employees who sign and do not revoke a Release of Claims will be eligible to receive Severance Pay according to the following schedule:

<b>Length of Service</b>	<b>Months of Severance Pay</b>
0 but less than 5	1 months
5 but less than 10	2 months
10 but less than 15	3 months
15 but less than 20	4 months
20 but less than 25	5 months
25 or more	6 months

Severance Pay will be:

- Based on the employee's unbroken length of service, calculated on full, 12 month, years of service.
- Calculated on the last monthly base salary except for those employees returning to "regular active" from "flexible service" status. An Employee who, at the time he or she is notified of their Eligible Termination, was a "flexible service" employee for less than 60 days and who, immediately prior to being classified "flexible service", was a "regular active" employee will be returned to "regular active" status for purposes of determining Severance Pay.
- Paid in semi-monthly payments based on the above table

- Taxable
- Severance Payments will begin the first regularly scheduled payroll following the date of separation if Human Resources received the signed Release of Claims and the seven-day revocation period has expired prior to the payroll processing cutoff. Otherwise, the Severance Payments will begin on the first available payroll processing date following receipt of the signed Release of Claims and expiration of the seven-day revocation period
- Payments may be reduced by any amount owed by the Employee to the Corporation.
- Severance Payments are issued as payroll live check, direct deposit will discontinue

#### **Other Transition Assistance**

Other Transition Assistance consists of (1) the opportunity to utilize Delphi-provided outplacement services to assist employees in obtaining employment outside the Corporation and (2) a \$2,000 payment included in the last regularly scheduled payroll check which the Employee, at his or her discretion, may use toward COBRA health care continuation coverage through Delphi. The local HR Representative will assist in scheduling outplacement service. Use of the outplacement service should commence within sixty days of separation and will generally be limited to six months in duration.

- Eligible Employees who sign a Release of Claims will receive Severance Pay and Other Transition Assistance.
- Eligible Employees who do not sign a Release of Claims will not be eligible for Other Transition Assistance.

#### **Vacation**

- Employees will vest vacation on a monthly basis. Example: Separation effective 5/1/2009, vacation vested four (4) months or 33.3%. Vacation for an employee with 5 yrs service = 120 hours,  $(120 \times .333=39.96)$  hours vested, round to nearest whole or 40 hours of entitlement.
- Employees impacted by the involuntary programs will be allowed to revoke their deductions for purchased days with their final regularly scheduled paycheck. Employees may use vacation purchased through payroll deductions; however no payment may be received after the plan year. Employees who have used more days than deducted through payroll will have the remaining dollars deducted from their last regularly scheduled paycheck. Vested vacation must be utilized prior to purchase days.

#### **Company Car Allowance**

- Company car allowances will be discontinued at the end of the pay period in which the last day of work occurred.

#### **Tuition Assistance**

- The tuition assistance program is suspended for 2009, employees will not be eligible for reimbursement of courses started after January 1, 2009.

#### **Incentive Compensation**

- Employees must be on the active roll on date of the incentive compensation payout to be eligible to receive incentive compensation. Eligible employees who retire or accept a separation payment under Separation Allowance Plan guidelines prior to the payout maintain their eligibility to receive a prorated award.

#### **Flexible Compensation Payment**

- The Flexible Compensation payment program is suspended for 2009 and will not be paid.

# Career Transition Service

## Delphi Corporation

Lee Hecht Harrison provides the following customized Career Transition Services. These services are designed to assist all levels in the organization make a successful career transition. It includes every element of support that an individual might need and has been tailored to meet the needs of Delphi's employees. Services are provided for the length of time specified by the organization.

### **Phase 1: Months 1-3**

Built around LHH's proven **Milestones for Career Transition** process for successful job search.

- Includes both team and individual consultation with LHH consultants
- Personal and career assessment
- "Milestones" Seminar for Career Transition, Productivity Clinic
- Membership in Job Search Work Team
- Access to LHH office facilities and workspace or equivalent LHH@HOME administrative support
- Access to Career Resource Network
- Access to Interactive Workshops and LHH Job Lead Development activities
- Financial Planning seminars

### **Phase 2: Months 4-6**

Milestones activity continues, with scheduled visits to LHH office to meet with LHH career consultant, and participate in Job Search Work Team on the day the team meets. Access to workspace also provided on that day. Access to Career Resource Network continues on remote basis (accessed from home 24/7, and from office on JSWT day).

### **Phase 3: Months 7-8**

At completion of Month 6, client may be eligible for service continuation, if he/she has not yet landed and is fully engaged in search. If so, an additional month of service (at same support level as Phase 2) will be provided. A second month (to a maximum of two) may also be provided as necessary and appropriate.

LHH Career Transition Assistance: 1-800-665-8193

**CERTIFICATE OF SERVICE**

I, Louis S. Chiappetta, an attorney, hereby certify that on August 17, 2010, I caused a true and correct copy of the foregoing REORGANIZED DEBTORS' FIRST REQUEST FOR ADMISSION – RANDY D. AUSTIN — PROOF OF ADMINISTRATIVE EXPENSE CLAIM NUMBER 17330 to be served by the methods indicated below upon:

Randy D. Austin  
2617 Hudson Aurora Rd.  
Hudson, Ohio 44236  
rdaustin@roadrunner.com

(By e-mail and overnight mail)

By: /s/ Louis S. Chiappetta  
Louis S. Chiappetta

## **Exhibit B**

Hearing Date: September 24, 2010  
Hearing Time: 10:00 a.m. (Prevailing Eastern Time)

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
155 North Wacker Drive  
Chicago, Illinois 60606  
John Wm. Butler, Jr.  
John K. Lyons  
Ron E. Meisler

- and -

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
Four Times Square  
New York, New York 10036

Attorneys for DPH Holdings Corp., et al.,  
Reorganized Debtors

DPH Holdings Corp. Legal Information Hotline:  
Toll Free: (800) 718-5305  
International: (248) 813-2698

DPH Holdings Corp. Legal Information Website:  
<http://www.dphholdingsdocket.com>

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11
	:	
DPH HOLDINGS CORP., <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
	:	(Jointly Administered)
Reorganized Debtors.	:	
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REORGANIZED DEBTORS' FIRST SET OF INTERROGATORIES WITH  
RESPECT TO PROOF OF ADMINISTRATIVE EXPENSE CLAIM NUMBER 17330

("REORGANIZED DEBTORS' FIRST SET OF INTERROGATORIES – RANDY D. AUSTIN  
– PROOF OF ADMINISTRATIVE EXPENSE CLAIM NUMBER 17330")



DPH Holdings Corp. and certain of its affiliated reorganized debtors in the above-captioned cases (together with DPH Holdings Corp., the "Reorganized Debtors"), successors of Delphi Corporation and certain of its domestic subsidiaries and affiliates, former debtors and debtors-in-possession in the above-captioned cases (the "Debtors"), request that Randy D. Austin respond to all interrogatories set forth below. All responses must be returned no later than September 10, 2010 to the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 155 North Wacker Dr., Chicago, IL, 60606, Attn: John K. Lyons and Louis S. Chiappetta. The Reorganized Debtors hereby reserve their right to amend, modify, or supplement this request for Interrogatories With Respect To Proof Of Administrative Expense Claim Number 17330.

Instructions and Definitions

A. The requirements of Rules 7033-1 and 7034-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of New York (the "Local Rules") are incorporated herein.

B. The Uniform Definitions in Discovery Requests set forth in Civil Rule 26.3 of the Local Rules of the United States District Courts for the Southern District of New York, incorporated by reference in Rule 7026-1 of the Local Rules shall apply to these interrogatories.

C. "Bankruptcy Code" means the United States Code, 11 U.S.C. §§ 101-1330, as amended as of October 8, 2005.

D. "Claim" means the portion of proof of administrative expense number 17330 that asserts a \$5,000.00 liability for denied outplacement services.

E. "Debtors" means Delphi Corporation, its affiliated debtors and debtors-in-possession and/or any of its predecessor(s) or successor(s) in interest, parent corporations, subsidiaries, affiliates and other related entities, owners, officers, directors, employees, agents

and beneficiaries, including attorneys, consultants and independent contractors, or any one of the foregoing.

F. "Delphi" means Delphi Corporation.

G. "LHH" means Lee Hetch Harrison, the Debtors' outplacement service provider.

H. "Reorganized Debtors" means DPH Holdings Corp. and its affiliated reorganized debtors in the above-captioned cases.

#### Interrogatories

1. Identify the date when you were separated from Delphi.

2. Identify the date of any meeting concerning your separation from Delphi in which you participated.

3. Identify the date or dates on which you contacted LHH concerning outplacement services.

4. Identify the date or dates on which you contacted Delphi human resources concerning outplacement service.

5. Identify any out of pocket expenses incurred as a result of the denial of outplacement services.

6. Identify the bases for your damages calculation of \$5,000.00.

7. Identify any and all witnesses, exhibits, and other evidence that you will use to pursue your Claim.

Dated: Chicago, Illinois  
August 17, 2010

SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP

By: /s/ John K. Lyons  
John Wm. Butler, Jr.  
John K. Lyons  
Ron E. Meisler  
155 North Wacker Drive  
Chicago, Illinois 60606

- and -

Four Times Square  
New York, New York 10036

Attorneys for DPH Holdings Corp., et al.,  
Reorganized Debtors

**CERTIFICATE OF SERVICE**

I, Louis S. Chiappetta, an attorney, hereby certify that on August 17, 2010, I caused a true and correct copy of the foregoing REORGANIZED DEBTORS' FIRST SET OF INTERROGATORIES – RANDY D. AUSTIN – PROOF OF ADMINISTRATIVE EXPENSE CLAIM NUMBER 17330 to be served by the methods indicated below upon:

Randy D. Austin  
2617 Hudson Aurora Rd.  
Hudson, Ohio 44236  
rdaustin@roadrunner.com

(By e-mail and overnight mail)

By: /s/ Louis S. Chiappetta  
Louis S. Chiappetta

# **Exhibit C**

Hearing Date: September 24, 2010  
Hearing Time: 10:00 a.m. (Prevailing Eastern Time)

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
155 North Wacker Drive  
Chicago, Illinois 60606  
John Wm. Butler, Jr.  
John K. Lyons  
Ron E. Meisler

- and -

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
Four Times Square  
New York, New York 10036

Attorneys for DPH Holdings Corp., et al.,  
Reorganized Debtors

DPH Holdings Corp. Legal Information Hotline:  
Toll Free: (800) 718-5305  
International: (248) 813-2698

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re	:	Chapter 11
	:	
DPH HOLDINGS CORP., <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
	:	(Jointly Administered)
Reorganized Debtors.	:	
	:	
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REORGANIZED DEBTORS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS WITH  
RESPECT TO PROOF OF ADMINISTRATIVE EXPENSE CLAIM NUMBER 17330

("REORGANIZED DEBTORS' FIRST REQUEST FOR PRODUCTION – RANDY D. AUSTIN –  
PROOF OF ADMINISTRATIVE EXPENSE CLAIM NUMBER 17330")

DPH Holdings Corp. and certain of its affiliated reorganized debtors in the above-captioned cases (together with DPH Holdings Corp., the "Reorganized Debtors"), successors of Delphi Corporation and certain of its domestic subsidiaries and affiliates, former debtors and debtors-in-possession in the above-captioned cases (the "Debtors"), by and through their attorneys, request that Randy D. Austin produce all documents relating to the matters listed below and provide such documents no later than September 10, 2010 to the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 155 North Wacker Dr., Chicago, Illinois 60606, Attn: John K. Lyons and Louis S. Chiappetta. The Reorganized Debtors hereby reserve their right to amend, modify, or supplement this request for the Production Of Documents With Respect To Proof Of Administrative Expense Claim Number 17330.

Instructions

1. The requirements of Rules 7033-1 and 7034-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of New York (the "Local Rules") are incorporated herein.
2. The requests call for all documents in your possession, custody, control or care, including, but not limited to, those documents in the actual or constructive possession, custody, control or care of any attorney, agent or other representative of yours.
3. If any documents requested herein have been lost or destroyed, the documents so lost or destroyed shall be identified by author, date and subject matter. In addition, the date of the disposal, the matter of disposal, the reason for disposal, the persons authorizing the disposal and the person disposing of the document shall also be identified.
4. This request shall be deemed continuing so as to require further and supplemental production should the party to whom this request is directed obtain additional

documents falling within its scope between the time of initial production and the time of the hearing or trial.

5. All documents produced in response to this request shall be produced *in toto*, notwithstanding the fact that portions thereof may contain information not requested, shall include drafts and interim editions, as well as final editions, of a document, and shall include all editions or copies of a document which are not identical (whether due to handwritten notations, revisions or otherwise) to the original or other produced copy of a document.

6. Responsive documents shall be produced in any form in which they are kept in the ordinary course of your business maintaining all evidence and information of their origin, including from whose files they were obtained and the files, books, folders or other ways in which the documents were maintained.

7. Electronic or computerized information or data shall be produced in an intelligible format or together with a description of the system from which the information was derived sufficient to permit rendering of the material into intelligible form.

8. For any document withheld on a claim of privilege, provide the following information: (1) the date the document was prepared or the date it bears; (2) the author of the document; (3) the addressee(s) and recipient(s) of the document; (4) the title and/or subject matter of the document; (5) the source of the document; (6) the identity of the person to whom the document or any portion thereof already had been revealed; and (7) the basis for withholding the document.

9. If you contend that it would be unreasonably burdensome to obtain and provide all the documents or information called for in response to any one of these document requests, then:



a. produce all documents and information which are available to you without undertaking what is contended to be an unreasonable burden;

b. describe with particularity the efforts you made to secure such documents and information; and

c. state with particularity the grounds on which you contend that additional efforts to obtain such documents or information would be unreasonably burdensome.

10. If there are no responsive documents to any particular request, please state so in writing.

#### Definitions

A. The Uniform Definitions in Discovery Requests set forth in Civil Rule 26.3 of the Local Rules of the United States District Courts for the Southern District of New York, incorporated by reference in Rule 7026–1 of the Local Rules, shall apply to these requests for production.

B. "Bankruptcy Code" means the United States Code, 11 U.S.C. §§ 101-1330, as amended as of October 8, 2005.

C. "Claim" means the portion of proof of administrative expense number 17330 that asserts a \$5,000.00 liability for denied outplacement services.

D. "Debtors" means Delphi Corporation, its affiliated debtors and debtors-in-possession and/or any of its predecessor(s) or successor(s) in interest, parent corporations, subsidiaries, affiliates and other related entities, owners, officers, directors, employees, agents and beneficiaries, including attorneys, consultants and independent contractors, or any one of the foregoing.

E. "Delphi" means Delphi Corporation.

F. "LHH" means Lee Hetch Harrison, the Debtors' outplacement service provider.

G. "Reorganized Debtors" means DPH Holdings Corp. and its affiliated reorganized debtors in the above-captioned cases.

H. "Responses" means each and all responses by Randy D. Austin to any objection or notice regarding the Claim (undocketed and Docket Nos. 19651 and 20213).

Requests

1. All documents concerning your contention that you contacted LHH or the Debtors' human resources department, including without limitation your contention that you contacted LHH or the Debtors human resources department on or before June 29, 2009.

2. All documents concerning your contention that you suffered damages as a result of the denial of outplacement services.

3. All documents that you intend to use at any deposition, hearing, or trial related to your Claim or Responses

4. Documents sufficient to identify the salary, wages, or other benefits that you have received from an employer or as the result of any work performed by you since your separation from Delphi.

Dated: Chicago, Illinois  
August 17, 2010

SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP

By: /s/ John K. Lyons  
John Wm. Butler, Jr.  
John K. Lyons  
Ron E. Meisler  
155 N. Wacker Drive  
Chicago, Illinois 60606

- and -

Four Times Square  
New York, New York 10036

Attorneys for DPH Holdings Corp. et al.,  
Reorganized Debtors

**CERTIFICATE OF SERVICE**

I, Louis S. Chiappetta, an attorney, hereby certify that on August 17, 2010, I caused a true and correct copy of the foregoing REORGANIZED DEBTORS' FIRST REQUEST FOR PRODUCTION – RANDY D. AUSTIN — PROOF OF ADMINISTRATIVE EXPENSE CLAIM NUMBER 17330 to be served by the methods indicated below upon:

Randy D. Austin  
2617 Hudson Aurora Rd.  
Hudson, Ohio 44236  
rdaustin@roadrunner.com

(By e-mail and overnight mail)

By: /s/ Louis S. Chiappetta  
Louis S. Chiappetta

# **Exhibit D**

Randy D. Austin, pro se  
2617 Hudson Aurora Rd.  
Hudson, Ohio 44236  
330-655-7817  
[rdaustin@roadrunner.com](mailto:rdaustin@roadrunner.com)

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SEP 10 2010

SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x	:	
In re	:	Chapter 11
	:	
DELPHI CORPORATION, et al.,	:	Case No. 05-44481 (RDD)
	:	
Debtors,	:	(Jointly Administered)
	:	
-----x	:	

**RESPONSE OF RANDY D. AUSTIN TO  
OBJECTION TO CLAIM NO. 17330**

On July 6, 2009, Randy D. Austin filed an Administrative Expense Claim Form against Delphi Corporation in the amount of \$35,260 plus Outplacement Services.

The Claim has been assigned Claim No. 17330

Delphi has fulfilled the \$35,260 claim.

Delphi has denied the Outplacement Services (Lee Hecht Harrison) specified in the Severance Agreement.

Lee Hecht Harrison (LHH) verbally reported Delphi's denial of Outplacement Services for Mr. Austin the first week of July, 2009. The initial contact to LHH was made the prior week. The initial contact ended in a voice mail which was returned the following week by Vondell Petry. There were numerous phone conversations with various LHH employees which ended in the statement that Delphi denied Outplacement Services.

Lisa N. Fronk and Robert J. Spitak, both with Delphi Human Resources, were contacted following the Delphi July shutdown. Both denied Lee Hecht Harrison outplacement services. The e-mail was attached in an earlier filing.

Randy D. Austin, claimant, has pursued employment since March 2<sup>nd</sup>. Mr. Austin accepted a General Electric employment offer November 22, 2009. Mr. Austin started

with General Electric December 14, 2009 following drug screen, background check and prior employment verification.

A financial remedy of \$5000 is claimed. LHH states that the value of their service is \$1000 per month. The LHH Outplacement service includes 1) Resume Preparation Assistance, 2) Training in Job Search Techniques, 3) Office Space, 4) Phones, 5) Networking Groups, 6) Employment Leads, 7) Training in Areas which that could add an additional skill to a resume, and 8) Professional Certifications in some of the Training Areas. One example of Training and Certification is the topic of Project/Program Management.

Court filings made on Delphi's behalf describe a Separation Meeting format that was not representative of the 15 minute March 2<sup>nd</sup> meeting attended by Mr. Austin, Mr. Gruber, and Ms Fronk. Delphi scheduled 15 minute sessions with individual Salary employees during the week of March 2<sup>nd</sup>. In my case it was announced 90 minutes before the session. These sessions continued sequentially and in parallel for multiple days. Mr. Austin's colleague, Mr. Rubinic, was scheduled with Mr. Gruber starting at the end of the 15 minute session with Mr. Austin.

The Outplacement Topic was mentioned once during the 15 minute session while the Separation Agreement form was handed to Mr. Austin. Mr. Gruber stated that Mr. Austin would receive 6 months severance allowance and Outplacement Assistance if Mr. Austin signed the Agreement and would receive 1 month severance allowance and no Outplacement Assistance if the Agreement was not signed. This was the only mention of Outplacement Assistance during this meeting. Ms Fronk provided an envelope for the Separation Agreement and stated that it must be returned signed by April 17<sup>th</sup>.

Various other topics were covered in detail during the 15 minute session. The topic that Mr. Gruber spent the largest amount of time was the topic of Retirement. Mr. Gruber stated that Mr. Austin was eligible for Early Retirement and encouraged the enrollment to collect retirement benefits.

The topic with the second most time allocated by Delphi during the 15 minute session was the Temporary Layoff status in effect thru the end of April as well as continuation of benefits during the time period thru April.

The topic with the third most time allocated by Delphi during the 15 minute session was the explanation of the process of being escorted to Mr. Austin's desk and then out of the building following the collection of personal property from Mr. Austin's desk. This topic also included badge, keys, credit card.

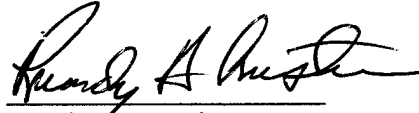
Neither the Separation Agreement or Benefit Summary forms were reviewed with Mr. Austin using the written form as a reference or a guide. The only other mention of the forms during the 15 minute session was the statement that the 800 number to initiate retirement was included on the Benefit Summary form.

Neither Mr. Gruber or Ms. Fronk answered Mr. Austin's questions except a question on repeating the due date. Mr. Austin requested to schedule a session with Ms Fronk to answer questions which Ms. Fronk denied at the 15 minute session between Mr. Austin, Mr. Gruber, and Ms. Fronk.

Ms Fronk also denied a meeting request later in March.

The claim of \$5000 for Outplacement Services was included on the July 6<sup>th</sup> Administrative Expense Claim form. Delphi's exhibit also included the statement that Delphi's HR would assist in scheduling Outplacement Services.

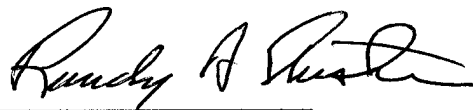
Respectfully submitted,



Randy D. Austin, Pro se  
2617 Hudson Aurora Rd.  
Hudson, Ohio 44236  
330-655-7817  
[rdaustin@roadrunner.com](mailto:rdaustin@roadrunner.com)

#### CETIFICATE OF SERVICE

A copy of the foregoing was sent by regular U.S. Mail postage prepaid this 4<sup>th</sup> day of September, 2010 to DPH Holding Corp., 5725 Delphi Drive, Troy, Michigan 48098 (Attn President) and to counsel for the Reorganized Debtors, c/o Skadden, Arps, Slate, Meagher & Flom LLP, 155 North Wacker Drive, Chicago, Illinois 60606 (Attn John Wm. Butler Jr, John K Lyons, Joseph N. Wharton).



Randy D. Austin, Pro se  
2617 Hudson Aurora Rd.  
Hudson, Ohio 44236  
330-655-7817  
[rdaustin@roadrunner.com](mailto:rdaustin@roadrunner.com)



# **Exhibit E**

**McFerrin, Kate (CHI)**

---

**From:** Chiappetta, Louis S (CHI)  
**Sent:** Friday, September 17, 2010 2:09 PM  
**To:** 'rdaustin@roadrunner.com'  
**Subject:** RE: In re DPH Holdings Corp. -- Discovery Requests -- Randy D. Austin Administrative Expense Claim No. 17330

Mr. Austin,

Can you please provide more detail of your calculation as soon as possible ? Including an itemized detail of the amount you spent per category plus documents showing that you actually paid the asserted amounts.

Regards,

Louis S. Chiappetta

**Louis S. Chiappetta**

Associate

**Skadden, Arps, Slate, Meagher & Flom LLP**

155 North Wacker Drive | Chicago | Illinois | 60606-1720

T: 312.407.0965 | F: 312.827.9317

[louis.chiappetta@skadden.com](mailto:louis.chiappetta@skadden.com)

---

**From:** Randy Austin [<mailto:rdaustin@roadrunner.com>]  
**Sent:** Thursday, September 16, 2010 7:02 PM  
**To:** Chiappetta, Louis S (CHI)  
**Subject:** RE: In re DPH Holdings Corp. -- Discovery Requests -- Randy D. Austin Administrative Expense Claim No. 17330

Mr. Chiappetta,

I did make a response to the court. Let me know if you did not receive the response.

I did not include the topic of employment search expenses. Excluding reimbursed interview expenses, and including unreimbursed interview expenses, search meeting expenses, training expenses including Youngstown State University tuition, ASQ Jobs Board, postage, paper, phone, Job search textbooks totals \$3402.10

Randy Austin

---

**From:** Chiappetta, Louis S [<mailto:Louis.Chiappetta@skadden.com>]  
**Sent:** Wednesday, September 15, 2010 2:40 PM  
**To:** 'rdaustin@roadrunner.com'  
**Cc:** Lyons, John K  
**Subject:** RE: In re DPH Holdings Corp. -- Discovery Requests -- Randy D. Austin Administrative Expense Claim No. 17330  
**Importance:** High

Dear Mr. Austin,

Your deadline to respond to the Reorganized Debtors' discovery requests was September 10, 2010. Do you have any documents that are responsive to our requests and do you intend to respond to the Admissions and Interrogatories?

9/21/2010

Please contact me at as soon as possible to discuss this matter.

I can be reached at 1-312-407-0965.

Regards,

Louis S. Chiappetta

**Louis S. Chiappetta**

Associate

**Skadden, Arps, Slate, Meagher & Flom LLP**

155 North Wacker Drive | Chicago | Illinois | 60606-1720

T: 312.407.0965 | F: 312.827.9317

[louis.chiappetta@skadden.com](mailto:louis.chiappetta@skadden.com)

**From:** Chiappetta, Louis S (CHI)

**Sent:** Tuesday, August 17, 2010 3:57 PM

**To:** 'rdaustin@roadrunner.com'

**Cc:** Lyons, John K (CHI)

**Subject:** In re DPH Holdings Corp. -- Discovery Requests -- Randy D. Austin Administrative Expense Claim No. 17330

**Importance:** High

Dear Mr. Austin,

Attached please find the Reorganized Debtors' first set of (i) requests for admissions, (ii) requests for interrogatories, and (iii) request for production. Also attached please find the Claims Procedures Order and Administrative Claims Procedures Order, which sets the deadline to respond to the attached discovery requests no later than 10 business days before the Claims Objection Hearing. In this case, all documents, admissions, and answers to interrogatories must be **received no later than September 10, 2010**.

Regards,

Louis S. Chiappetta

**Louis S. Chiappetta**

Associate

**Skadden, Arps, Slate, Meagher & Flom LLP**

155 North Wacker Drive | Chicago | Illinois | 60606-1720

T: 312.407.0965 | F: 312.827.9317

[louis.chiappetta@skadden.com](mailto:louis.chiappetta@skadden.com)

\*\*\*\*\*

To ensure compliance with Treasury Department regulations, we advise you that, unless otherwise expressly indicated, any federal tax advice contained in this message was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

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\*\*\*\*\*

This email (and any attachments thereto) is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of

9/21/2010

this email, you are hereby notified that any dissemination, distribution or copying of this email (and any attachments thereto) is strictly prohibited. If you receive this email in error please immediately notify me at (212) 735-3000 and permanently delete the original email (and any copy of any email) and any printout thereof.

Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

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## **EXHIBIT D**

**Hearing Date: November 18, 2010**  
**Hearing Time: 10:00 a.m. (prevailing Eastern time)**

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
155 North Wacker Drive  
Chicago, Illinois 60606  
John Wm. Butler, Jr.  
John K. Lyons  
Ron E. Meisler

- and -

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
Four Times Square  
New York, New York 10036

Attorneys for DPH Holdings Corp., et al.,  
Reorganized Debtors

DPH Holdings Corp. Legal Information Hotline:  
Toll Free: (800) 718-5305  
International: (248) 813-2698

DPH Holdings Corp. Legal Information Website:  
<http://www.dphholdingsdocket.com>

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11
	:	
DPH HOLDINGS CORP., <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
	:	(Jointly Administered)
Reorganized Debtors.	:	
	:	
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REORGANIZED DEBTORS' STATEMENT OF DISPUTED ISSUES WITH  
RESPECT TO PROOF OF ADMINISTRATIVE EXPENSE CLAIM NUMBER 19089  
(ETKIN MANAGEMENT, L.L.C.)

("STATEMENT OF DISPUTED ISSUES – ETKIN MANAGEMENT, L.L.C.")

DPH Holdings Corp. and certain of its affiliated reorganized debtors in the above-captioned cases (collectively, the "Reorganized Debtors"), hereby submit this Statement Of Disputed Issues (the "Statement Of Disputed Issues") With Respect To Proof Of Administrative Expense Claim Number 19089 filed by Etkin Management, L.L.C. ("Etkin"), as agent for 1401 Troy Associates Limited Partnership ("Troy Associates," and together with Etkin, the "Claimants") and respectfully represent as follows:

Background

1. On October 8 and 14, 2005, Delphi Corporation ("Delphi") and certain of its subsidiaries and affiliates, including Delphi Automotive Systems LLC ("DAS LLC") (collectively, the "Debtors"), predecessors of the Reorganized Debtors, filed voluntary petitions under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as then amended, in the United States Bankruptcy Court for the Southern District of New York.

2. On July 15, 2009, the Claimants filed proof of administrative expense claim number 19089 (the "Proof of Administrative Expense Claim") against Delphi. The claim asserts an administrative priority claim in the amount of \$263,342.03 for alleged damages occurring in connection with a certain leased premises (the "Claim").

3. On January 22, 2010, the Reorganized Debtors objected to the Claim pursuant to the Reorganized Debtors' Forty-Third Omnibus Objection Pursuant To 11 U.S.C. § 503(b) And Fed. R. Bankr. P. 3007 To (I) Expunge Certain Administrative Expense (A) Severance Claims, (B) Books And Records Claims, (C) Duplicate Claims, (D) Equity Interests, (E) Prepetition Claims, (F) Insufficiently Documented Claims, (G) Pension, Benefit, And OPEB Claims, (H) Workers' Compensation Claims, And (I) Transferred Workers' Compensation Claims, (II) Modify And Allow Certain Administrative Expense Severance Claims, And (III)

Allow Certain Administrative Expense Severance Claims (Docket No. 19356) (the "Forty-Third Omnibus Claims Objection").

4. On February 11, 2010, the Claimants filed the Response Of Etkin Management, L.L.C., As Agent For 1401 Troy Associates Limited Partnership, In Opposition To Reorganized Debtors' Objection To Proof of Claim Number 19089 Included In Reorganized Debtors' Forty-Third Omnibus Claims Objection (Docket No. 19418) (the "Response").<sup>1</sup>

5. On October 6, 2009, the Debtors substantially consummated the First Amended Joint Plan Of Reorganization Of Delphi Corporation And Certain Affiliates, Debtors And Debtors-In-Possession, As Modified (the "Modified Plan"), which had been approved by this Court pursuant to an order entered on July 30, 2009 (Docket No. 18707), and emerged from chapter 11 as the Reorganized Debtors. In connection with the consummation of the Modified Plan, Delphi and DAS LLC emerged from chapter 11 as DPH Holdings Corp. and DPH-DAS LLC, respectively. Article 9.6(a) of the Modified Plan provides that "[t]he Reorganized Debtors shall retain responsibility for administering, disputing, objecting to, compromising, or otherwise resolving all Claims against, and Interests in, the Debtors and making distributions (if any) with respect to all Claims and Interests." Modified Plan, art. 9.6.

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<sup>1</sup>

In its Response, Etkin attempted to amend its Proof of Administrative Expense Claim by asserting an additional \$25,309.00 in alleged restoration costs. Pursuant to section 9.6(d) of the Modified Plan (as defined below), "Any claim (whether a newly filed Claim or an amendment to a previously filed Claim) filed after the later of (i) the Effective Date, (ii) with respect to Claims for rejection damages, the bar date established pursuant to Article 8.3 of this Plan for the filing of such claims, (iii) with respect to Claims that are Administrative Claims, the bar date established pursuant to Articles 10.2 and 10.5 of this Plan, or (iv) with respect to Claims that are Prepetition Employee Related Obligations, the bar date established pursuant to Article 7.12(b) of this Plan, shall not be recognized, or recorded on the claims register, by the Claims Agent and shall be disallowed automatically without the need for any objection from the Debtors or the Reorganized Debtors unless such untimely filing is expressly authorized by an order of the Bankruptcy Court." Accordingly, Etkin's attempt to amend its Proof of Administrative Expense Claim was not recognized or recorded on the claims register.



Disputed Issues

A. Delphi Does Not Owe Etkin Certain Amounts Asserted In The Proof Of Administrative Expense Claim

6. Etkin asserts in the Proof of Administrative Expense Claim that Delphi owes Etkin a total of \$263,342.03 for alleged damages occurring in connection with certain leased premises. These amounts allegedly arise from a lease between Etkin and DAS LLC, as successor in interest to General Motors Corporation (n/k/a Motors Liquidation Company), dated June 1, 1989 and subsequently amended (the "Lease") under which the Debtors leased certain premises from Etkin located at 1401 Crooks Road, Troy, Michigan (the "Premises"). The Reorganized Debtors have reviewed the information attached to the Proof of Administrative Expense Claim and the Response and dispute that they owe certain amounts asserted in the Proof of Administrative Expense Claim.

7. Alleged Damages To Premises Are Not The Responsibility Of The Reorganized Debtors. A portion of the Proof of Administrative Expense Claim is based on damages for which the Reorganized Debtors are not liable because the asserted damages were either (i) ordinary wear and tear or (ii) otherwise not the responsibility of the Reorganized Debtors under the Lease. Therefore, \$188,924.58 should be subtracted from the amount claimed.

8. After taking into account the above-referenced deductions to the Proof of Administrative Expense Claim, the Reorganized Debtors reconciled the Proof of Administrative Expense Claim as illustrated in the following chart:

<u>Claimants' Asserted Amount</u>		\$263,342.03
<u>Modifications</u>	Amount Claimed For Damages That Are Not The Responsibility Of The Reorganized Debtors	(\$188,924.58)
<u>Reconciled Amount</u>		\$74,417.45

9. The Reorganized Debtors do not dispute the remaining \$74,417.45 of the Claim and request that the Claim be reduced to and allowed as an administrative priority claim against DPH-DAS LLC in the amount of \$74,417.45.

Reservation Of Rights

10. This Statement Of Disputed Issues is submitted by the Reorganized Debtors pursuant to paragraph 9(d) of the Order Pursuant To 11 U.S.C. § 502(b) And Fed. R. Bankr. P. 2002(m), 3007, 7016, 7026, 9006, 9007, And 9014 Establishing (I) Dates For Hearings Regarding Objections To Claims And (II) Certain Notices And Procedures Governing Objections To Claims (Docket No. 6089) (the "Claims Objection Procedures Order"), as applicable under the Order Pursuant To 11 U.S.C. §§ 105(a) and 503(b) Authorizing Debtors To Apply Claims Objection Procedures To Address Contested Administrative Expense Claims (Docket No. 18998) (the "Administrative Claims Objection Procedures Order"). Consistent with the provisions of the Claims Objection Procedures Order, the Reorganized Debtors' submission of this Statement Of Disputed Issues is without prejudice to (a) the Reorganized Debtors' right to later identify and assert additional legal and factual bases for disallowance, expungement, reduction, or reclassification of the Claim and (b) the Reorganized Debtors' right to later identify additional documentation supporting the disallowance, expungement, reduction, or reclassification of the Claim.

WHEREFORE the Reorganized Debtors respectfully request that this Court enter an order (a) allowing the Proof of Administrative Expense Claim as an administrative priority claim against DPH-DAS LLC in the amount of \$74,417.45 and (b) granting the Reorganized Debtors such other and further relief as is just.

Dated: New York, New York  
September 21, 2010

SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP

By: John Wm. Butler, Jr.  
John Wm. Butler, Jr.  
John K. Lyons  
Ron E. Meisler  
155 North Wacker Drive  
Chicago, Illinois 60606

- and -

Four Times Square  
New York, New York 10036

Attorneys for DPH Holdings Corp., et al.,  
Reorganized Debtors

# **EXHIBIT E**

**Hearing Date And Time: October 21, 2010 at 10:00 a.m.**  
**Deadline To File Motion For Leave To File Late Claim: October 1, 2010**

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
155 North Wacker Drive  
Chicago, Illinois 60606  
John Wm. Butler, Jr.  
John K. Lyons  
Ron E. Meisler

- and -

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
Four Times Square  
New York, New York 10036

Attorneys for DPH Holdings Corp., et al.,  
Reorganized Debtors

DPH Holdings Corp. Legal Information Hotline:  
Toll Free: (800) 718-5305  
International: (248) 813-2698

DPH Holdings Corp. Legal Information Website:  
<http://www.dphholdingsdocket.com>

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re	:	Chapter 11
	:	
DPH HOLDINGS CORP., <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
Reorganized Debtors.	:	(Jointly Administered)
	:	
-----	x	

NOTICE OF DEADLINE TO FILE MOTION FOR LEAVE TO FILE LATE  
ADMINISTRATIVE EXPENSE CLAIM WITH RESPECT TO LATE ADMINISTRATIVE  
EXPENSE CLAIM FILED BY CADENCE INNOVATION, LLC  
(ADMINISTRATIVE EXPENSE CLAIM NO. 20055)

PLEASE TAKE NOTICE that pursuant to rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure, if claimant Cadence Innovation, LLC (the "Claimant") wishes to further prosecute proof of administrative expense claim number 20055 (the "Untimely Claim") it filed without leave of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") after the July 15, 2009 bar date for administrative expense claims arising through May 31, 2009 (the "July 15 Bar Date"),<sup>1</sup> the Claimant must file a motion seeking such relief (the "Motion").

PLEASE TAKE FURTHER NOTICE that such Motion must (a) be in writing and (b) conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, served in accordance with the procedures set forth herein and the Supplemental Order Under 11 U.S.C. §§ 102(1) And 105 And Fed. R. Bankr. P. 2002(m), 9006, 9007, And 9014 Establishing Omnibus Hearing Dates And Certain Notice, Case Management, And Administrative Procedures, entered March 20, 2006 (Docket No. 2883) and the Twentieth Supplemental Order Under 11 U.S.C. §§ 102(l) And 105 And Fed. R. Bankr. P. 2002(m), 9006, 9007, And 9014 Establishing Omnibus Hearing Dates And Certain Notice, Case Management, And Administrative Procedures, entered July 16, 2010 (Docket No. 20427), and (c) **be received no later than October 1, 2010** (the "Deadline").

PLEASE TAKE FURTHER NOTICE that if the Claimant files a Motion by the Deadline, the hearing to consider the relief requested in such Motion will be held on October 21,

---

<sup>1</sup> The July 15 Bar Date was established pursuant to paragraph 38 of the Order (A)(I) Approving Modifications To Debtors' First Amended Plan Of Reorganization (As Modified) And Related Disclosures And Voting Procedures And (II) Setting Final Hearing Date To Consider Modifications To Confirmed First Amended Plan Of Reorganization And (B) Setting Administrative Expense Claims Bar Date And Alternative Transaction Hearing Date, entered on June 16, 2009 (Docket No. 17032) (the "Modification Procedures Order"). On July 15, 2009, this Court entered the Stipulation And Agreed Order Modifying Paragraph 38 Of Modification Procedures Order Establishing Administrative Expense Bar Date (Docket No. 18259) to provide that paragraph 38 of the Modification Procedures Order should be amended to require parties to submit an administrative expense claim form for administrative expense claims for the period from the commencement of these cases through May 31, 2009 rather than through June 1, 2009.

2010 at 10:00 a.m. (prevailing Eastern time) (the "Hearing") before the Honorable Robert D. Drain, United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, Courtroom 118, White Plains, New York 10601-4140.

PLEASE TAKE FURTHER NOTICE that only a Motion made as set forth herein will be considered by the Bankruptcy Court at the Hearing. If no Motion is filed by the Deadline, the Bankruptcy Court may enter a final order disallowing and expunging the Untimely Claim filed by the Claimant without further notice or hearing on October 21, 2010.

Dated: New York, New York  
September 21, 2010

SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP

By: /s/ John Wm. Butler, Jr.  
John Wm. Butler, Jr.  
John K. Lyons  
Ron E. Meisler  
155 North Wacker Drive  
Chicago, Illinois 60606

- and -

Four Times Square  
New York, New York 10036

Attorneys for DPH Holdings Corp., et al.,  
Reorganized Debtors

# **EXHIBIT F**



Hearing Date and Time: September 24, 2010 at 10:00 a.m. (prevailing Eastern time)

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
155 North Wacker Drive  
Chicago, Illinois 60606  
John Wm. Butler, Jr.  
John K. Lyons  
Ron E. Meisler

- and -

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
Four Times Square  
New York, New York 10036

Attorneys for DPH Holdings Corp., et al.,  
Reorganized Debtors

DPH Holdings Corp. Legal Information Hotline:  
Toll Free: (800) 718-5305  
International: (248) 813-2698

DPH Holdings Corp. Legal Information Website:  
<http://www.dphholdingsdocket.com>

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11	
	:		
DPH HOLDINGS CORP., <u>et al.</u> ,	:	Case Number 05-44481 (RDD)	
	:		
Reorganized Debtors.	:	(Jointly Administered)	
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REORGANIZED DEBTORS' RESPONSE TO ITW'S REPLY TO THE REORGANIZED DEBTORS'  
RESPONSE TO THE SUPPLEMENTAL BRIEF OF ILLINOIS TOOL WORKS, INC. AND ITW  
FOOD EQUIPMENT GROUP LLC IN SUPPORT OF CLAIM NOS. 11983, 11985, 11988, AND 11989

DPH Holdings Corp. and certain of its affiliated reorganized debtors in the above-captioned cases (collectively, the "Reorganized Debtors") hereby submit the Reorganized Debtors' Response To ITW's Reply To The Reorganized Debtors' Response To The Supplemental Brief Of Illinois Tool Works, Inc. And ITW Food Equipment Group LLC In Support Of Claim Nos. 11983, 11985, 11988, And 11989, and respectfully represent as follows:

### **Introduction**

1. The claims of Illinois Tool Works, Inc. and ITW Food Equipment Group LLC (collectively, "ITW") must be disallowed because no amount of discovery will allow ITW to refute the fact that the Debtors did not exist at the time the South Dayton Dump and Landfill (the "Site") ceased operating and the Debtors are not corporate successors to General Motors. Additionally, regardless of how ITW describes its claim, to the extent that it seeks payment from the Debtors for future costs to cleanup the Site, the claim falls squarely within Section 502(e)(1)(B) and must be disallowed.

### **The Site Ceased Operating Before the Debtors Existed.**

2. ITW states that the Reorganized Debtors inadvertently pointed to the wrong exhibit when arguing that the Site ceased operations before the Debtors existed, but ITW does not actually contend that the Site operated after the Debtors were formed as part of the divestiture by General Motors Corporation ("General Motors") of its Delphi Automotive Systems unit (the "Divestiture"). Indeed, ITW could not credibly make such an assertion, as demonstrated by the attached Fact Sheet from the United States Environmental Protection Agency ("EPA") for the Site, which definitively states that the Site operated from 1941 to 1996. Exhibit A. This is confirmed by the attached press release from EPA which again states that the Site "operated as a landfill from 1941 to 1996." Exhibit B. Thus, ITW has failed to raise any

actual factual dispute regarding when the Site operated, and the only relevant question is whether the Debtors are liable for the wastes that General Motors sent to the Site prior to the Divestiture.

**Delaware Law is the Appropriate Choice of Law.**

3. ITW asserts that Ohio law should govern whether the Debtors are the corporate successors to General Motors.<sup>1</sup> In support of this assertion, ITW points to a state-court opinion from Alaska dealing with a personal injury case. Whatever Alaskan state courts may say on this issue, the District Court for the Southern District of New York has made clear that, under New York choice of law principles, the state of incorporation has the greatest interest in issues of corporate successor liability and therefore that state's law applies. Soviet Pan Am Travel Effort v. Travel Comm., Inc., 756 F.Supp. 126, 131 (S.D.N.Y. 1991). ITW tries to escape this precedent by noting that ITW's claims arise under CERCLA. CERCLA, however, is irrelevant to the question of whether the Divestiture rendered the Debtors the corporate successors to General Motors. That question can be resolved without any reference to CERCLA and hinges solely on the nature of the corporate transaction between General Motors and the Debtors. Thus, the ruling of Soviet Pan Am Travel Effort applies and Delaware law must govern the issue of successor liability in this case.

4. ITW's brief makes no attempt to refute the Reorganized Debtors' arguments that under Delaware law, the Debtors are not successors to General Motors. Thus, because ITW is incorrect that Ohio law applies, its arguments for liability fail. Furthermore, even under Ohio law, the Debtors are not successors to General Motors.

---

<sup>1</sup> ITW cites a number of cases examining whether state law or federal common law should apply to successor liability issues under CERCLA. This question remains unresolved in the Second Circuit, but it has been recognized that federal common law should not be used when there is no conflict between federal interests and state law. New York v. Nat'l Serv. Indus. Inc., 460 F.3d 201, 208 (2d Cir. 2006). In this case, ITW urges the application of Ohio state law and thus, presumably, agrees with the Debtors' position that state, not federal law, should apply.

**The Debtors Are Not Successors Under Ohio Law.**

5. Ohio law recognizes four requirements for a *de facto* merger: "(1) the continuation of the previous business activity and corporate personnel, (2) a continuity of shareholders resulting from a sale of assets in exchange for stock, (3) the immediate or rapid dissolution of the predecessor corporation, and (4) the assumption by the purchasing corporation of all liabilities and obligations ordinarily necessary to continue the predecessor's business operations." Welco Indus. Inc. v. Applied Cos., 617 N.E.2d 1129, 1134 (Ohio 1993). The Debtors have argued that the ITW cannot establish the third and fourth factors of this test. ITW concedes this point, making absolutely no argument that it could establish these factors, and instead only asserts that it need not establish all four factors and that it is entitled to discovery. Both of these arguments must be rejected.

6. The issue of whether all four factors must be established to find successor liability is irrelevant to this case because the Ohio Supreme Court, the Ohio Court of Appeals and the Third Circuit (applying Ohio law) have all held that the **critical** element of a *de facto* merger is the dissolution of the selling corporation after the transaction. Welco Indus. Inc. v. Applied Cos., 617 N.E.2d 1129, 1134 (Ohio 1993) (no *de facto* merger when selling corporation continues to exist after the sale of one of its divisions, even if the selling corporation no longer conducts the same operations of the division); Telxon Corp. v. Smart Media of Del., Inc., 2005 Ohio 4931, slip op. at \*50 (Ohio Ct. App. 2005) (the *de facto* merger doctrine "presupposes that the predecessor corporation no longer exists."); Berg Chilling Sys., Inc. v. Hull Corp., 435 F.3d 455, 470 (3d Cir. 2006) (the critical element of the *de facto* merger test under Ohio Law "is that one corporation survives while the other ceases to exist.").

7. No amount of discovery will allow ITW to prove that General Motors ceased to exist after the 1999 Divestiture. Indeed, ITW has conceded this fact in its briefs. Because this is a critical element of the *de facto* merger doctrine under Ohio law, ITW's assertion of successor liability under this doctrine necessarily fails and it is not entitled to discovery .

8. Finally, we also note that ITW argues that there is a relaxed standard for corporate successor liability in tort claims. In making this argument, ITW cites only to the Welco case, but the Welco case expressly recognized that the Ohio Supreme Court has **declined** to relax such standards in tort cases. 617 N.E.2d at 1133, citing Flaughner v. Cone Automatic Mach. Co., 507 N.E.2d 331 (Ohio 1987). Thus, despite ITW's assertions, there is no basis under Ohio law for applying a less strict standard for successor liability for tort claims.

**The Termination of the EMA Eliminated Any Basis for the Debtors' Liability at the Site.**

9. ITW previously argued that it was a third-party beneficiary under the Environmental Matters Agreement (the "EMA") by and between General Motors Corporation and Delphi Automotive Systems Corporation. ITW has not responded to any of the Debtors' arguments explaining why ITW does not have a valid claim for the costs at the Site under the EMA, but instead argues for the first time that the Debtors are liable at the Site because the EMA was not terminated until after ITW asserted its claims against the Debtors. This argument is not supported by any case law and is fundamentally flawed. ITW concedes that the EMA was terminated in July 2009 but then seeks to use that now-nullified agreement to hoist the pre-Divestiture liabilities of General Motors upon the Debtors. It is well-recognized that contracting parties are relieved of their obligations upon termination of the contract. See Restatement, Contracts § 386; Nat'l Labor Relations Bd. v. Cone Mills Corp., 373 F.2d 595, 598 (5th Cir.

1967) ("It is axiomatic in contract law that parties to an agreement are relieved of their mutual obligations upon termination of the agreement.").

10. In making its arguments regarding the EMA, ITW confuses liability which the Debtors may have under CERCLA and liabilities they may have had under the EMA. CERCLA imposes liability on four classes of potentially responsible parties ("PRPs"): (a) the current owner or operator of a contaminated site; (b) anyone who owned or operated the contaminated site at the time hazardous substances were disposed of; (c) any person who arranged for the disposal of any hazardous substances at the contaminated site; and (d) any person who transported any hazardous substances to a contaminated site. 42 U.S.C. § 9607(a). The only relevant class of PRP that ITW has tried to assert in this matter is (c) – persons who arrange for the disposal of wastes. But because the Debtors did not exist at the time the Site operated, no plausible argument can be made that the Debtors themselves fall into this class. Thus, the Debtors are not PRPs under CERCLA and the only way the Debtors could have liability for the wastes that were sent to the Site by General Motors is if the Debtors are corporate successors to General Motors. And, while it is true that the assumption of liability can be grounds for successor liability, the fact of the matter is that since the EMA was terminated, there is no agreement under which the Debtors assumed the liability for the Site. By terminating the EMA as part of their reorganization plan, the Debtors were relieved of all obligations under the that agreement.

11. ITW's remaining arguments on the EMA must also be rejected. ITW argues that PRPs cannot contract away their liability to third parties and that CERCLA prohibits PRPs from transferring away their direct liability. These arguments are without merit because they are premised on the assertion that the Debtors are the entities with statutory liability under

CERCLA, when it was General Motors that sent the wastes to the Site and thus has the direct liability under CERCLA. The termination of the EMA relieved the Debtors of any contractual obligation to satisfy such liability on behalf of General Motors, but never did the Debtors have any statutory liability under CERCLA. Furthermore, the termination of the EMA did not contract away the liability under CERCLA that General Motors, as a PRP, has at the Site.

12. ITW also argues that the Debtors' position would allow the Debtors and General Motors to escape liability at the Site. This opposite of this is true. As explained above, the termination of the EMA relieved the Debtors of the obligation to satisfy General Motors' liability at the Site, but it had no effect on General Motors' liability. Indeed, from the moment that ITW incurred costs at the Site, it could have sought recovery of those costs from General Motors.

**The Debtors Are Not the Mere Continuation of General Motors.**

13. ITW argues that because General Motors owned the stock of Delphi Corporation before the Divestiture and for five months after, the Debtors are the mere continuation of General Motors. This argument must be rejected for two reasons. First, it is clear that under Ohio law, the mere continuation doctrine does not apply if there are two corporations surviving after the transaction. Travis v. Harris Corp., 565 F.2d 443, 447 (7th Cir. 1977) (applying Ohio law and finding that the mere continuation theory requires "the existence of only one corporation at the completion of the transfer."); McGaw v. South Bend Lathe, Inc., 598 N.E.2d 18, 21-22 (Ohio Ct. App. 1991) (stating that successor liability based on mere continuation cannot exist without "the seller's prompt extinction after the transfer"). Again, no amount of discovery will allow ITW to prove that General Motors was promptly dissolved after the 1999 Divestiture. Furthermore, the Cytec case, upon which ITW relies extensively,

expressly recognizes that, under Ohio law, there can be no successor liability based on the mere continuation theory when the selling corporation continues to exist after the transaction. Cytec Industries, Inc. v. The B.F. Goodrich Co., 196 F.Supp.2d 644, 655 (S.D. Ohio 2002) (calling reliance upon the mere continuation theory to establish corporate successor liability "misplaced" when the selling entity "continued to exist as a viable corporation").

14. Second, ITW completely ignores the Per-Co Ltd. case which recognized that an alteration in the ownership of a company shortly after a transaction renders the mere continuation theory "inapposite". Per-Co, Ltd. v. Great Lakes Factors, 299 Fed. Appx. 559, 563 (6th Cir. 2008). Thus, because General Motors no longer owned the stock of Delphi Corporation shortly after the Divestiture – and, indeed, this transfer of stock was expressly contemplated as part of the Divestiture, as evidenced by the Master Separation Agreement (see Master Separation Agreement<sup>2</sup> at Recitals) – the mere continuation theory does not apply to this case.

**ITW's Claims for Future Costs are Barred by Section 502(e)(1)(B).**

15. ITW does not refute that it is barred, under section 502(e)(1)(B) from recovering costs at the Site for which the Debtors and ITW may be liable to the EPA. Instead, it argues that it has incurred past costs at the Site. The Debtors do not refute that costs that ITW has incurred in the past are not subject to disallowance under section 502(e)(1)(B). However, any claims for future costs to cleanup the Site must be disallowed because, as has been recognized by the Bankruptcy Court for the Southern District of New York, claims for cleanup costs filed by co-PRPs at a site are fundamentally claims "to satisfy the obligation that both the

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<sup>2</sup> The Master Separation Agreement was attached as Exhibit D to Reorganized Debtors' Supplemental Reply To Responses Of Certain Claimants To Debtors' Objections To Proofs Of Claim Nos. 11983, 11985, 11988, And 11989 Filed By Illinois Tool Works Inc. And ITW Food Equipment Group LLC (Docket No. 19603).



debtor and the claimant had to the EPA for the remediation of the properties." In re Drexel Burnham Lambert Group, 148 B.R. 982, 989 (Bankr. S.D.N.Y. 1991). Thus, because ITW is liable to EPA for future costs at the Site and those costs are contingent, ITW's claim seeking reimbursement of those cost from the Debtors satisfies the requirements of section 502(e)(1)(B).

16. ITW's only argument on future costs is that there will be no double recovery because, in ITW's interpretation of EPA's claim, EPA is not seeking the same costs as ITW. This argument must be rejected for two reasons. First, the presence of a third-party creditor asserting a claim for the same liability is not a prerequisite for disallowance under Section 502(e)(1)(B). Indeed, courts have previously disallowed claims even when the governmental agency failed to file any claim at all. In re Apco Liquidating Trust, 370 B.R. 625, 634(D. Del. 2007); In re Cottonwood Canyon Land Co., 146 B.R. 996, 997 (D. Colo. 1992); see also In re Lull Corp., 162 B.R. 234, 238 (Bankr. D. Minn.1993). The above cases all recognized that as long as the three elements for disallowance under section 502(e)(1)(B) are met, it does not matter if the underlying claimant (in this case, EPA) has filed a claim against the Debtors for the same costs sought by the co-liaible party.

17. Furthermore, ITW's interpretation of EPA's claim is too narrow. ITW claims that EPA seeks only certain costs from the Debtors. However, EPA's claim is not so limited. It asserts that the Debtors are jointly and severally liable for all costs at the Site, including future costs to perform the cleanup of the Site totally over \$20 - \$50 M. By asserting that the Debtors are jointly and severally liable, EPA is, in fact, seeking to recover the entire costs of the future work at the Site and there is no basis to interpret EPA's broad claim in a more limited fashion.

18. Finally, we note that, if EPA does not ultimately seek to recover from the Debtors their fair share (if any) of future cleanup costs at the Site, then ITW could always seek to have its claims reconsidered under section 502(j). For now, however, because ITW's claims clearly meet the requirements for section 502(e)(1)(B), they should be disallowed.

WHEREFORE the Reorganized Debtors respectfully request this Court enter an order (a) sustaining the Reorganized Debtors' objection with respect to the Claims, (b) disallowing and expunging the Claims in their entirety, and (c) granting such further and other relief this Court deems just and proper.

Dated: New York, New York  
September 21, 2010

SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP

By: /s/ John Wm. Butler, Jr.

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Reorganized Debtors

Exhibit A



<http://www.epa.gov/region5/sites/sodayton/sodaytonfs200409.htm>

Last updated on Thursday, September 03, 2009

## Region 5 Cleanup Sites

You are here: [EPA Home](#) [Region 5](#) [Where You Live](#) [Cleanup Sites](#) [South Dayton Dump and Landfill](#) September 2004 Fact Sheet

# September 2004 Fact Sheet

United States Environmental Protection Agency

NATIONAL PRIORITIES LIST (NPL) September 2004

SOUTH DAYTON DUMP & LANDFILL

Moraine, Ohio

South Dayton Dump & Landfill (SDD) is located in Montgomery County, Ohio. SDD occupies at least 33 acres that include two 5 acre ponds, which are former extraction pits that have filled with water. Former disposal operations at SDD have resulted in soil and ground water contamination (vinyl chloride and trichloroethylene), which poses a threat to the underlying drinking water aquifer and the adjacent Great Miami River.

Extraction pits were excavated at SDD after 1936. Landfill operations conducted between 1941 and 1996 filled in the extraction pits. Before 1970, a significant disposal practice at SDD was open burning of materials, primarily vegetation and wood wastes. Between 1950 and 1970, drummed wastes were occasionally accepted at the landfill. The drums were emptied of their contents and either buried or sold to drum recyclers. Between June 1973 and July 1976, drums containing hazardous waste were accepted at SDD from two nearby Hobart Corporation (Hobart) facilities in Dayton, Ohio. The drums contained cleaning solvents (1,1,1-trichloroethane [TCA]; methyl ethyl ketone [MEK]; and xylene); cutting oils; paint; Stoddard solvent; and machine-tool, water-based coolants. In May 1978, the Montgomery County Combined General Health District (MCCGHD) and Ohio Environmental Protection Agency (OEPA) conducted an inspection of the landfill and noted several problems, including the presence of containers labeled "hazardous." Further evidence of hazardous waste disposal at SDD comes from a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Notification of Hazardous Waste Site Form submitted by Industrial Waste Disposal Company, Inc. (IWD) on June 9, 1981, indicating that SDD had been used as a disposal landfill for the industrial and municipal wastes of IWD's customers. Former landfill operations were conducted in at least the southern half of the Valley Asphalt Plant. In 2000, evidence of former landfill operations beneath the Valley Asphalt Plant was discovered when drums were encountered during excavation and installation of a new sewer line at the Valley Asphalt Plant. The drums contained: Aroclor 1254, benzene, 2-butanone, chlorobenzene, ethylbenzene, 4-methyl-2-pentanone, toluene, trichloroethylene, vinyl chloride, and xylene. The drums and associated soil contamination were removed by OEPA in 2000.

In 1985, OEPA prepared a preliminary assessment (PA) for SDD. The PA indicated that hazardous waste at SDD poses a threat to the underlying drinking water aquifer and the adjacent Great Miami River. In 1991, the U.S. EPA's field investigation team (FIT) conducted a screening site inspection (SSI). Soil analytical results indicated the presence of volatile organic compounds (VOCs), PAHs, polychlorinated biphenyls (PCBs), and metals at concentrations significantly above background concentrations. In 1996, OEPA conducted a Site Team Evaluation Prioritization (STEP) investigation, which included soil, sediment, and ground water sampling activities. Ground water analytical results indicated the presence of VOCs, including: 1,2-dichloroethylene (total) at concentrations up to 150 micrograms per liter ( $\mu\text{g/L}$ ) (Maximum

Contaminant Level 70 µg/L); 1,1-dichloroethane at concentrations up to 13 µg/L; toluene at concentrations up to 15 µg/L; and chloroethane up to 22 µg/L.

Between 1998 and 2002, SDD owners conducted several investigations at the landfill, including ground water and surface water sampling. Ground water analytical results from 2002 revealed maximum concentrations of vinyl chloride at 180 µg/L (Maximum Contaminant Level 2 µg/L) and trichloroethylene at 76 µg/L (Maximum Contaminant Level 5 µg/L).

The OEPA 1996 STEP documents elevated concentrations of VOCs in ground water beneath SDD. The ground water contamination is present in the Great Miami Aquifer, which is a sole source aquifer that provides drinking water to the following receptors within 4 miles of SDD:

- (1) the employees of the Delphi Automotive Systems Plant,
- (2) the residents of the Cities of Oakwood and West Carrollton, and
- (3) residents of Montgomery County served by Montgomery County's standby wells.

*[The description of the site (release) is based on information available at the time the site was evaluated with the HRS. The description may change as additional information is gathered on the sources and extent of contamination. See 56 FR 5600, February 11, 1991, or subsequent FR notices.]*

For more information about the hazardous substances identified in this narrative summary, including general information regarding the effects of exposure to these substances on human health, please see the Agency for Toxic Substances and Disease Registry (ATSDR) ToxFAQs. ATSDR ToxFAQs can be found on the Internet at <http://www.atsdr.cdc.gov/toxfaq.html> or by telephone at 1-888-42-ATSDR or 1-888-422-8737.

Exhibit B

EPA proposes Superfund National  
Priorities List sites in Danville, Ill., and  
Copley and Moraine, Ohio

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For Immediate Release

No. 04-OPA146

CHICAGO (Sept. 23, 2004) -- U.S. Environmental Protection Agency has proposed three new sites in the Great Lakes states for addition to the Superfund National Priorities List. Hegeler Zinc, Danville, Ill., and two sites in Ohio, Copley Square Plaza, Copley, and South Dayton Dump & Landfill, Moraine, were among 14 new proposed sites across the United States named in today's Federal Register.

The National Priorities List guides EPA in determining which sites warrant further Federal action. Since Superfund's inception, cleanup at about 70 percent of NPL sites has been paid for or performed by potentially responsible parties held responsible for the contamination. For the newly listed or proposed sites, EPA does not expect to need significant construction funds for several years, until thorough investigations of the sites are completed.

The Hegeler Zinc site is a former zinc smelter in Vermilion County, about three miles south of Danville, Ill. The site includes 5-acre slag waste pile contaminated with heavy metals such as lead, arsenic and beryllium. A 2001 Illinois EPA study of the area confirmed lead and cadmium-contaminated soil in some residential areas. EPA is also concerned about an unnamed creek that flows through the site into Grape Creek, which ultimately connects with the Vermilion River. In May 2002, EPA installed a 6-foot fence at the site to prevent public access.

The Copley Square Plaza site is in Summit County, Ohio. The former Danton Dry Cleaners, which operated from 1963 to 1994, has been identified as a source of contamination. Past investigations by Ohio EPA have confirmed ground-water contamination from dry-cleaning solvents including tetrachloroethylene, or PCE.

The South Dayton Dump & Landfill is a 33-acre site in Montgomery County that operated as a landfill from 1941 to 1996. Past operations at the now-closed landfill have resulted in soil and ground-water contamination, which poses a threat to an underground drinking water aquifer and the Greater Miami River, which runs along the west side of the property.

There are now 68 sites proposed for the list and awaiting final EPA action, and 1,244 final sites on the NPL, including 158 federal facilities. Cleanup construction has been completed at 910 sites. More information is at [www.epa.gov/superfund/sites/npl/current.htm](http://www.epa.gov/superfund/sites/npl/current.htm).

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# **EXHIBIT G**



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DPH Holdings Corp.  
Special Parties

Company	Address1	City	State	Zip
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# **EXHIBIT H**

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# **EXHIBIT I**

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# **EXHIBIT J**

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